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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

COMMENTS ON PETITIONS
FOR CLARIFICATION OR RECONSIDERATION

AMSC Subsidiary Corporation ("AMSC") hereby comments on petitions for clarification or reconsideration of the Commission's Report and Order in the above-captioned docket.^{1/}

AMSC supports various arguments made by other CMRS providers in their petitions.

Specifically, AMSC agrees that the Commission should make clear that: (i) states do not have the authority to impose contribution requirements on CMRS providers; (ii) state universal service programs should be technologically neutral and adopt the same high-cost area eligibility standards as the federal framework; (iii) CMRS providers may utilize sampling methods to divide their total end-user revenue into intrastate and interstate revenue pools; and (iv) carriers whose local charges are usage-based are not barred from eligibility for federal high-cost area support.

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^{1/} Report and Order, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (released May 8, 1997) ("Order").

Background

The Commission authorized AMSC in 1989 to construct, launch and operate the first dedicated U.S. MSS system.^{2/} The first AMSC satellite was launched in 1995, and AMSC's SKYCELL Satellite Telephone Service began early in 1996. AMSC's satellite communications system covers the entire continental United States, including Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. AMSC's system for the first time provides voice and data communications services to people who live, work, or travel in rural and remote areas of the U.S. unserved by terrestrial technologies.

The Commission's new universal service policy establishes competitive neutrality and makes support available to all carriers, regardless of their technology. Order at paras. 47-50. Thus, AMSC should be able to gain eligibility for high-cost area support, for the first time, for fixed-site telephone service to rural households and businesses without any telephone service. In addition to this fixed-site service, AMSC can provide mobile telecommunications services to rural health care providers, whose telecommunications needs will also be subsidized under the new program.^{3/}

^{2/} Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992); *aff'd sub nom.* Aeronautical Radio, Inc. v. FCC, 983, F.2d 275 (D.C. Cir. 1993).

^{3/} In its own Petition for Reconsideration, AMSC urged the Commission to clarify several ambiguities in its Order. Specifically, with respect to its new high-cost-area support policy, AMSC urged the Commission to clarify the following: (i) that local calls on AMSC's system qualify as "local usage;" (ii) that the same E911 standard applies to AMSC as applies to other CMRS providers; (iii) that carriers reselling services purchased from carriers not receiving support for the same facilities should be eligible to receive subsidies; and (iv) that carriers using AMSC's nationwide system can satisfy the Commission's advertising requirement by advertising their services in nationally available publications. With respect to rural health care providers, AMSC urged the

(continued...)

Discussion

I. States Cannot Impose Universal Service Contribution Requirements on CMRS Providers, Except in Narrow Circumstances

In its Order, the Commission concluded that the states are not precluded from requiring Commercial Mobile Radio Service ("CMRS") providers to contribute to state universal service support mechanisms. Order at para. 791. The Cellular Telecommunication Industry Association ("CTIA") and a number of other parties argue that the ability of states to require such contributions is severely limited by Section 332(c) of the Communications Act, which states the following:^{4/}

Nothing in this subparagraph shall exempt providers of commercial mobile service (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.

AMSC agrees with CTIA and others that the Commission's interpretation of Section 254 of the Telecom Act conflicts directly with Section 332(c)(3). In keeping with Section 332(c)(3), a state can only impose such contribution requirements on CMRS providers if CMRS has

^{3/}(...continued)

Commission to clarify that the reference point for determining the size of the subsidies available for use of AMSC's system will be the applicable rates for terrestrial emergency radio systems in urban areas. None of the other petitions for reconsideration and/or clarification filed in this proceeding were inconsistent with any of these arguments.

^{4/} Petition for Reconsideration and Clarification of the Cellular Telecommunications Industry Association, dated July 17, 1997 ("CTIA Petition"), at 1-10; Airtouch Communications, Inc. Petition for Clarification and Partial Reconsideration, dated July 17, 1997 ("Airtouch Petition"), at 12-16; Joint Petition for Reconsideration, Comcast Cellular Communications and Vanguard Cellular Systems, dated July 17, 1997 ("Comcast/Vanguard Petition"), at 2-12; Petition for Reconsideration of Nextel Communications, Inc., dated July 17, 1997 ("Nextel Petition"), at 5-18.

become “a substitute for land line telephone exchange service for a substantial portion of the communications” within that state.

If the Commission adheres to its position that states can impose contribution requirements on CMRS providers, AMSC agrees that the Commission should at least ensure that the states do so in a way consistent with federal universal service policy. CTIA Petition at 6-10; Nextel Petition at 18-20. The Commission should make clear that state contribution cannot be excessive or duplicative of federal contributions.^{5/} In addition, the Commission should establish that states cannot use the contribution mechanism as a means of effectively regulating CMRS rates. States cannot mandate a special rate for particular classes of subscribers, or require rate averaging throughout a state. *See, e.g.*, CTIA Petition at 6-7.

II. The Commission Should Make Clear That State Universal Programs Must Be Competitively and Technologically Neutral

CTIA and Comcast/Vanguard argue that the Commission should make clear that state universal service support programs must be competitively and technologically neutral. CTIA Petition at 12; Comcast/Vanguard Petition at 17-18. In particular, Comcast/Vanguard Cellular argue that as long as a carrier satisfies the eligibility requirements of the new federal high-cost area policy, that carrier should automatically be eligible for support from any state universal service program, regardless of its technology. AMSC supports this position, and urges the Commission to reconfirm the importance of competitively neutral state universal service programs.

^{5/} In order to prevent state universal service levies that would “have the effect of prohibiting the ability of a CMRS operator to provide telecommunications service,” Nextel recommends that the Commission should permit no state levy that is more than twice the federal universal service levy. Nextel Petition at 20. Comcast/Vanguard urge that if a state sets a contribution rate greater than the federal rate, the Commission should allow CMRS providers to offset their federal contributions on a dollar to dollar basis. Comcast/Vanguard Petition at 20. AMSC would support either of these approaches.

III. In Dividing Total End-user Revenues into Intrastate and Interstate Revenue Pools, CMRS Providers Can Use Sampling Methods Similar to Those Used in the TRS Context

Under the Commission's order, contributions to the federal universal service program will be based on carriers' end-user revenues. With federal high-cost area support funded through a levy on interstate revenue alone, carriers will be required to divide their total end-user revenues into intrastate and interstate revenue pools. Several petitioners point out that a precise segregation of these end-user revenues is much more difficult for CMRS providers than for wireline carriers. AirTouch Petition at 10-12; CTIA Petition at 18-23. As a result, these parties argue that the Commission should permit CMRS providers to use the sampling methodologies utilized in the TRS context to estimate their percentage of interstate revenue.

AMSC agrees with these petitioners, and believes that the Commission should sanction the use of reasonable sampling methodologies in the federal universal service context. In AMSC's case, the use of such methodologies is particularly necessary. AMSC's system uses satellite beams that cover hundreds of thousands of square miles. AMSC cannot determine the location of an MSS terminal within a given beam, and, as a result, AMSC cannot automatically segregate its interstate and intrastate traffic. Thus, for the purpose of universal service contributions, the Commission should permit AMSC to perform sampling studies in order to estimate the relative proportion of intrastate and interstate traffic over its system.

IV. Carriers Whose Local Service Charges Are Usage-based Are Not Barred from Eligibility for Federal High-cost Area Support

CMRS providers typically charge for service based on usage, and, unlike most wireline carriers, do not provide an unlimited amount of local service for a set monthly fee.

Comcast/Vanguard argue that the Commission should clarify that carriers whose local charges

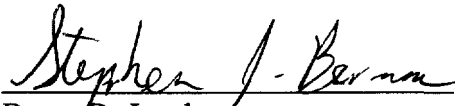
are usage-based, rather than flat-rate, are eligible for federal universal service support. AirTouch Petition at 10-12; CTIA Petition at 18-23. AMSC agrees that the Commission should reconfirm the neutrality of its universal service framework by explicitly establishing that carriers that utilize usage-based billing for local traffic can become eligible for federal universal service support.

Conclusion

Accordingly, AMSC hereby urges the Commission to clarify the issues described herein, and reconsider any of these issues to the extent necessary.

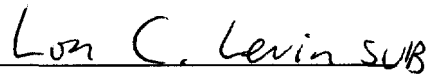
Respectfully submitted,

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August 18, 1997



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CERTIFICATE OF SERVICE

I, Elinor W. McCormick, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 18th day of August 1997, I served a true copy of the foregoing **"COMMENTS ON PETITIONS FOR CLARIFICATION OR**

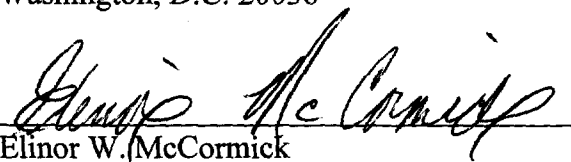
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